RANDALL ET AL. *v.* BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY, INDIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 274. Argued January 25, 1923.—Decided February 19, 1923.

A writ of error to the highest court of a State must be dismissed when the judgment is one of an intermediate court which the highest court has declined to review for want of jurisdiction. Writ of error to review 131 N. E. 776, dismissed.

Mr. Otto Gresham for plaintiffs in error.

Mr. Clyde H. Jones, with whom *Mr. D. P. Flanagan* was on the brief, for defendant in error.

Memorandum opinion by MR. JUSTICE SUTHERLAND.

This is a writ of error to the Supreme Court of Indiana, when, clearly, it should have been to the State Appellate Court.

The action was brought in the Superior Court for Tippecanoe County. A demurrer to the complaint was sustained. An appeal was allowed to the Supreme Court but that court, of its own motion, entered an order transferring the cause to the Appellate Court, for want of jurisdiction. The Appellate Court thereupon took the case, received the briefs of counsel, heard oral arguments and affirmed the judgment of the trial court. A petition for rehearing was submitted and denied. Plaintiffs in error then applied to the Supreme Court for an order to vacate its former order of transfer, or, in the alternative, for a writ of error *coram nobis,* which the Supreme Court denied.

It therefore appears that the Supreme Court refused to take the case on appeal for want of jurisdiction, and the judgment of the highest court of the State in which a deci-

sion in the suit could be had, Judicial Code, § 237, is that of the Appellate Court to which the writ should have been directed.

The writ of error must, therefore, be dismissed on the authority of *Western Union Telegraph Co.* v. *Hughes,* 203 U. S. 505; *Lane* v. *Wallace,* 131 U. S. Appendix CCXIX; *Norfolk & Suburban Turnpike Co.* v. *Virginia,* 225 U. S. 264, 269; *Second National Bank* v. *First National Bank,* 242 U. S. 600; *Prudential Insurance Co.* v. *Cheek,* 259 U. S. 530.

Dismissed.